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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ENTROPIC COMMUNICATIONS, LLC,
Plaintiff,

v.

COX COMMUNICATIONS, INC., *et al.*,
Defendants.

Case No.: 2:23-cv-01049-JWH-KES
(Lead Case)

Case No.: 2:23-cv-01050-JWH-KES
(Related Case)

[Assigned to the Honorable John W.
Holcomb]

ENTROPIC COMMUNICATIONS, LLC,
Plaintiff,

v.

COMCAST CORPORATION, *et al.*,
Defendants.

**ENTROPIC COMMUNICATIONS,
LLC'S RESPONSE TO COMCAST
DEFENDANTS' OBJECTION TO
REFERRAL TO SPECIAL
MASTER**

1 I. INTRODUCTION

2 This Court possesses the authority to refer “any disputes related to discovery . . .
3 and any other matters” to the Special Master. That authority derives not just from Rule
4 53, but the parties’ express agreement. *See* 1050 DE 90. Comcast now objects to this
5 Court’s exercise of that authority—not because it is improper but because, in Comcast’s
6 estimation, there is a risk of “delay, confusion, and unnecessary effort and expense.”
7 1049 DE 200 at 2:8–11. The opposite is true—Comcast’s Objection serves no purpose
8 but delay. This Court already weighed the efficiencies in making this referral and
9 reached the correct conclusion: referral expedites resolution of these disputes by
10 permitting the Special Master to address the underlying Motion to Amend and Motion
11 to Supplement (“Referred Motions”) and Comcast’s various arguments in opposition,
12 leaving only the ultimate issue—the sufficiency of Entropic’s willfulness allegations—
13 for the Court to resolve. The Court should overrule Comcast’s Objection.

14 II. FACTUAL AND PROCEDURAL HISTORY

15 Following the Court’s Order to Show Cause regarding appointment of a special
16 master and the subsequent hearing and Orders, on June 8, 2023, Entropic and Comcast
17 submitted a proposed order appointing Mr. Keyzer as the special master. 1050 DE 72.
18 As relevant to Comcast’s Objection, the parties jointly proposed an order outlining Mr.
19 Keyzer’s “Scope of Authority” as “authority to preside over . . . any disputes related to
20 discovery . . . and *any other matters referred to the Special Master by the Court.*” 1050
21 DE 72-2 § 2(a-b) (emphasis added). The Court entered this order on July 5, 2023,
22 confirming Mr. Keyzer’s authority over matters referred to him by the Court. 1050 DE
23 90.

24 Mr. Keyzer has already resolved numerous disputes between the parties across
25 this case and other related cases involving the same or similar patents. *See, e.g.*, 1049
26 DE 199. Further, Mr. Keyzer incidentally already has technical familiarity with six of
27 the Patents-in-Suit, having previously served as Technical Advisor to Judge Gilstrap
28

1 during the *Markman* process in *Entropic Commc'ns, LLC v. Charter Commc'ns, Inc.*
 2 prior to his appointment in this case. No. 2:22-cv-00125-JRG, DE 118 (E.D. Tex. June
 3 13, 2023).

4 **III. RESPONSE TO OBJECTION**

5 The Court did not improperly exercise its discretion in referring the present
 6 matters to the Special Master. The Court has already correctly concluded Entropic's
 7 Referred Motions should be addressed before Comcast's Motion to Dismiss because
 8 they determine the content of the operative complaint that Comcast seeks to dismiss.
 9 Special Master Keyzer undoubtedly has the authority to provide the Court with a Report
 10 and Recommendation ("R&R"), which will be helpful to the Court in its decisions.

11 Comcast is strangely resistant to this process. Comcast dresses up its objections
 12 as matters of "efficiency and propriety" in an effort to prioritize a ruling on its own
 13 Motion to Dismiss and delay resolution of these matters altogether. *See* 1049 DE 200
 14 at 6. Comcast is prematurely objecting to an R&R that has not even been issued, which
 15 needlessly complicates and delays—though that seems to be by design.¹

16 First, Comcast's decision not to oppose Entropic's Motion to Amend does not
 17 mean "nothing" is left "to be decided," as Comcast argues. 1049 DE 200 at 4.² Indeed,
 18 the motion must still be *granted or denied*, and any R&R from Special Master Keyzer
 19 will reduce the burden on this Court and promote efficient use of its time.

20 Second, apparently trusting neither the Special Master nor this Court's
 21 supervision of whatever R&R is produced, Comcast argues the Court has no authority
 22 to even ask for one. 1049 DE 200 at 4–6. This is false. Comcast expressly agreed (and
 23 the Court ordered) that Special Master Keyzer has authority to preside over not only
 24 "discovery disputes," but also "any other matters referred to the Special Master by the

25
 26 ¹ The order appointing Special Master Keyzer specifically sets forth a procedure for
 27 review of the Special Master's orders after objections by a party. 1050 DE 90 § 8.
 28 Comcast is free to avail itself of this procedure after the Special Master issues an R&R.

² Moreover, Comcast's objection to the referral of a motion that it did not oppose only
 serves to emphasize the outlandish nature of its position.

1 Court.” 1050 DE 72-2 § 2(a-b); 1050 DE 90 § 2(a-b). This broad authority is not a
 2 mistake—it allows the Court to utilize the Special Master as desired to assist with a
 3 complex and resource-consuming set of litigations. Comcast cites a case, but it is
 4 inapposite to the situation here. In *Castenada v. Burger King Corp.*, the Ninth Circuit
 5 declined to order the district court to appoint a special master, an appointment ***objected***
 6 ***to*** by the defendant, in a class action, to “determine both issues of defendant’s liability
 7 and the extent of injunctive relief, not to mention statutory damages to class members.”
 8 264 F.R.D. 557, 570 (9th Cir. 2009). Here, the parties consented to a broad scope of
 9 authority for the Special Master.

10 Running from its prior consent, Comcast now argues that this Court’s referral of
 11 the Referred Motions is improper because the Special Master was not appointed to
 12 resolve “dispositive legal motions, such as motions to dismiss.” 1049 DE 200 at 5. But
 13 the Special Master’s appointment speaks for itself, covering “any other matters referred
 14 to the Special Master by the Court.” 1050 DE 90 § 2(a-b). Nor does *Castenada* stand
 15 for the proposition that the District Court is forbidden from referring to the Special
 16 Master matters that might impact particular issues. *See generally*, 264 F.R.D. 577. The
 17 Court remains singularly in charge of making any dispositive findings as paragraph 8
 18 of the Court’s appointment provides a procedure for “Review of Special Master’s
 19 Orders.” 1050 DE 90.

20 Comcast’s insistence that this Court cannot trust itself to adequately review, and
 21 then either accept or reject, certain categories of the Special Master’s R&Rs is
 22 unsupportable. Courts regularly appoint special masters to hear dispositive motions,
 23 with and without the parties’ consent. *See, e.g., Diamond Resorts U.S. Collection Dev.,*
 24 *LLC v. Pandora Marketing*, 656 F. Supp. 1073, 1079–81 (C.D. Cal. 2023) (court
 25 appointed special master to hear summary judgment motions); *Thakur v. Cofiroute*
 26 *USA, LLC*, 2021 WL 304389, at *1 (C.D. Cal. Jan. 29, 2021) (court appointed special
 27 master to issue R&R on motion to dismiss, which the Court adopted in its entirety).
 28

Specifically, the *Thakur* Court adopted a special master’s R&R granting the defendant’s motion to dismiss without leave to amend, the exact “dispositive legal motion” Comcast contends, without support, is outside of the authority of a special master. *See Thakur*, 2021 WL 304389, at *1. Thus, the Special Master can not only issue an R&R “on whether Entropic’s post-suit allegations are futile,” but could issue an R&R on Comcast’s Motion to Dismiss if the Court were inclined to refer it.³ 1049 DE 200 at 6.

In summary, the Court has full authority to refer to the Special Master any disputes it sees fit—i.e., “any other matters referred to the Special Master by the Court.” 1050 DE 90 § 2(b). Comcast cannot selectively take back its consent. To the extent Comcast’s objection is simply an argument that the Court *should not* refer the Referred Motions because they might overlap or interplay with the Court’s decision on Comcast’s Motion to Dismiss, there are two simple responses. First, the Court has the authority to disagree with Comcast and has done so. Second, if the purported overlap is troublesome, the Court can refer the Referred Motions and the Motion to Dismiss to the Special Master to allow any R&R to grapple with whatever overlap or interaction may exist. Entropic requests that the Court move ahead with whatever method most expeditiously addresses the issues in the case that does not include entertaining pre-objections to a Special Master R&R that has not even issued.

Dated: February 1, 2024

Respectfully submitted,

By: /s/ Christina Goodrich

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³ The Court intended for the scope of the Special Master’s authority to resemble that of a magistrate judge, including the power to issue R&Rs. Magistrate judges, in addition to resolving discovery disputes, are vested with the authority to issue an R&R on a dispositive motion that may then be adopted by the district court. L.R. 72-1, 72-3. Similarly, the Court granted the Special Master authority to hear discovery disputes, as well as other motions referred to the Special Master by the Court. 1050 DE 90 § 2(a-b). Given the similarities between the areas of responsibility, the Special Master’s authority to hear “any other matters” referred by the Court should follow the same R&R procedure that is routinely implemented by magistrate judges. *See* L.R. 72-1, 72-3.

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Entropic Communications, LLC, certifies that this brief contains 1,424 words, which complies with the word limit of L.R. 11-6.1.

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